

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO.2573/2016

Mahatma Fuley Education Society, Chichal, Tq. Lakhandur, District – Bhandara,
through its Secretary and another
...Versus...
State of Maharashtra, Education and Sports Department, Mantralaya, Mumbai,
through its Secretary and others

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri H.A. Deshpande, Advocate for petitioners
Shri A.S. Fulzele, Addl. G.P. for respondent nos.1 and 2

CORAM : SMT. VASANTI A NAIK AND
MRS. SWAPNA JOSHI, JJ.

DATE : 29.11.2016

By this petition, the petitioners challenge the order of the Education Officer, dated 8.7.2015, asking the petitioner – Institution to consider appointing the respondent no.3 on compassionate ground, if a vacancy arises, in future and send the proposal for grant of approval to the appointment of the respondent no.3 to the Education Officer.

The father of the respondent no.3 was working as a peon in a School run by the petitioner no.1 – Society. The respondent no.3 was major at the time of the death of her father on 7.10.2002. According to the petitioners, the respondent no.3, for the first time, applied to the Education Officer for grant of compassionate appointment on 19.3.2012, though it is necessary

to apply for compassionate appointment within three months from the date of death of the employee and/or within six months from the date on which the minor son/daughter of the deceased employee attains majority. The respondent no.3 filed a writ petition bearing Writ Petition No.3284/2014, seeking a direction against the respondents to appoint her on compassionate ground. The said writ petition was disposed of with a direction to the Education Officer to look into the grievance in the representation made by the respondent no.3 on 2.9.2013 and take a decision thereon. This Court further directed the Education Officer to add the name of the respondent no.3 to the waiting list, if she was eligible for appointment. After the writ petition was disposed of, the Education Officer passed the impugned order, dated 8.7.2015, asking the petitioners to appoint the respondent no.3 on compassionate ground, if a vacancy arises in the School run by the petitioner – Society and send the proposal in respect of the respondent no.3 to the Education Officer for grant of approval.

Shri Deshpande, the learned Counsel for the petitioners submitted that the Education Officer was duty bound to first decide whether the respondent no.3 was entitled for appointment on compassionate ground. It is stated that as per the Government Resolution, dated 31.12.2002, it is the duty of the Education Officer to consider whether a candidate is eligible for appointment on compassionate ground and then place his/her name in the waiting list prepared by the Education Officer for appointing the said candidates on compassionate ground. It is submitted that a candidate desirous of seeking appointment on compassionate ground would be required to make an application

for compassionate appointment within three months from the date of death of the deceased employee. It is submitted that though the respondent no.3 was major, the respondent no.3 did not apply for compassionate appointment within three months from the date of death of her father and for the first time applied to the Education Officer on 19.3.2012. It is stated that the respondent no.3 was not eligible for appointment on compassionate ground but this aspect of the matter was not considered by the Education Officer before passing the impugned order. It is stated that by the impugned order, the Education Officer has directed the petitioner to appoint the respondent no.3 on compassionate ground, though she is not eligible for appointment.

Shri Fulzele, the learned Additional Government Pleader appearing for the Education Officer submitted that since this Court had directed the Education Officer to place the name of the respondent no.3 in the waiting list, the Education Officer had asked the petitioners to consider the claim of the respondent no.3 and appoint her on compassionate ground, if a vacancy arises in future. It is, however, fairly admitted that the Education Officer has not taken a decision in respect of the entitlement of the respondent no.3 for compassionate appointment, as directed by this Court by the order, dated 11.3.2015 in Writ Petition No.3284/2014.

On hearing the learned Counsel for the parties, it appears that the Education Officer was not justified in passing the impugned order. The Education Officer should have first decided whether the respondent no.3 was entitled for compassionate

appointment and if she was entitled, the Education Officer could have directed the petitioners to consider appointing the respondent no.3 on compassionate ground, if there was a vacancy in a suitable post in the School run by the petitioner – Society. However, without considering the entitlement of the respondent no.3 for compassionate appointment in accordance with the Government Resolution, dated 31.12.2002, the Education Officer directed the petitioners to appoint the respondent no.3 on compassionate ground. Since, the action on the part of the Education Officer in directing the petitioners to appoint the respondent no.3 on compassionate ground, without considering whether she was eligible for appointment, is bad in law, the impugned order is liable to be set aside.

Hence, for the reasons aforesaid, the writ petition is allowed. The impugned order is quashed and set aside. The Education Officer is free to take a decision on the entitlement of the respondent no.3 for appointment, in accordance with the order, dated 11.3.2015 in Writ Petition No.3284/2014.

Order accordingly. No costs.

JUDGE

JUDGE